

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD SCOTT,

Plaintiff,

v.

MARK SELING AND THE SPECIAL  
COMMITMENT CENTER,

Defendants.

Case No. C03-5398RBL

ORDER

This Civil Rights action has been re-referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff has been granted *in forma pauperis* status. (Dkt. #5). This action was remanded from the Ninth Circuit after dismissal for failure to state a claim. The remand indicates it was error to dismiss the action without giving plaintiff an opportunity to amend his complaint.

On July 27<sup>th</sup>, 2005 the case was re-referred to this United States Magistrate Judge. (Dkt. # 184). At the time of re-referral 9 motions are pending. Those motions are:

1. Plaintiff's motion for appointment of counsel. (Dkt. # 168).
2. Plaintiff's motion for a temporary restraining order. (Dkt. # 169).
3. Defendant's motion for entry of a case management order. (Dkt. # 172)

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4. Plaintiff's "emergency motion" for appointment of counsel. (Dkt. # 173).
5. Plaintiff's motion to amend the complaint to add defendants. (Dkt. # 177).
6. Plaintiff's motion for clarification regarding the mandate from the Ninth Circuit. (Dkt. # 179).
7. Plaintiff's motion to consolidate cases. (Dkt. # 180).
8. Plaintiff's motion to compel response to motions. (Dkt. # 181).
9. Plaintiff's request for copies. (Dkt. # 183).
1. Appointment of counsel. (Dkt. # 168).

Plaintiff in his motion for counsel states he is without a computer and has no law library. (Dkt. # 168). He fails to meet or address the standard for appointment of counsel. There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. Wilborn, 789 F.2d at 1331.

This case was remanded because plaintiff was not given leave to file an amended complaint prior to dismissal for failure to state a claim. Plaintiff has not attempted to show a likelihood of success on the merits and has not yet submitted his amended complaint. The motion is **DENIED**.

2. TRO. (Dkt. # 169).

Plaintiff's motion for a temporary restraining order will be dealt with by separate Report and Recommendation.

3. Case Management Order. (Dkt. # 172).

On December 8<sup>th</sup>, 2004 the District Court Judges in Tacoma entered a case management order in an attempt to curb Mr. Scott's abusive litigation practices. See, Scott v. Diaz, C04-5598RBL docket entry 24. Paragraph 13 of that order directs the Magistrate Judge to whom any

1 Scott case is assigned to enter a copy of the order in the case. Now that this action has been re-  
 2 referred to a Magistrate Judge entry of that order is appropriate. Defendants motion is **GRANTED**.

3 **The clerk of court is directed to enter a copy of the case management order in this action.**

4 Further, a standing sanction order was entered on April 5<sup>th</sup>, 2005 in all Scott cases. That order was  
 5 the result of further abusive litigation practices by Mr. Scott. That order states:

6 ORDER:

- 7 (1) The court adopts the Report and Recommendation.
- 8 (2) In all future cases, the plaintiff shall submit a signed affidavit, along with  
 9 the proposed complaint, verifying under penalty of perjury that none of  
 10 the issues raised in the proposed complaint have been litigated in the past  
 11 by the plaintiff.
- 12 (3) An application for in forma pauperis status, the affidavit required in  
 13 Item 1 above, and the proposed complaint shall be forwarded to the chief  
 14 judge of the district by the clerks office for review. The chief judge shall  
 15 determine whether the action should be allowed to proceed. Plaintiff  
 16 must provide full and complete disclosure of all financial information in  
 17 support of any in forma pauperis application.
- 18 (4) Plaintiff may not engage in discovery without leave of court. To obtain  
 19 leave of court he must submit written discovery to the court for prior  
 20 approval.
- 21 (5) Plaintiff may not issue any subpoenas or summons without prior  
 22 approval of the court. To obtain prior approval, the plaintiff must  
 show the subpoena or summons is proper. This will be done by  
 submitting his affidavit which clearly discloses the nature of the  
 information he is seeking and sets forth the name and address of the  
 person to whom the subpoena or summons is directed.
- 23 (6) Plaintiff is prohibited from filing any duplicative or repetitive motion in  
 24 an action. The filing of such motions will result in monetary sanctions or  
 25 dismissal of the action.
- 26 (7) Plaintiff shall not file a motion for reconsideration without making a  
 27 specific showing that the motion meets the criteria set forth in the local  
 28 rules for filing such a motion.
- (8) All settlement agreements with the plaintiff which include a monetary  
 payment shall require payment of the funds into the registry of the court  
 until such time as plaintiff has paid all outstanding debts for prior grants  
 of in forma pauperis status.
- (9) The case management order previously entered against the plaintiff shall  
 remain in full effect.

23 That order now applies to this action except of course for paragraph three as this case has  
 24 progressed beyond that point. Plaintiff is informed that violations of the court order may result in  
 25 sanctions.

26 4. "Emergency" motion for appointment of counsel. (Dkt. # 173).

27 This motion is redundant of docket entry 168 and a violation of the standing order regarding

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1 Mr. Scotts litigation. The motion is **DENIED** for the reasons set forth above. Further, in this  
2 motion plaintiff indicates the Ninth Circuit found merit to this action. Contrary to plaintiff's  
3 assertion, the Ninth Circuit did not reach the merits of this action but found it improper to have  
4 dismissed the action without giving the plaintiff leave to amend his complaint.

5 The court would be remiss if the court did not warn plaintiff that redundant motions may  
6 result in sanctions. Sanctions will not be entered at this time.

7 5. Plaintiff's motion to add defendants and amend the complaint. (Dkt. # 177).

8 This case was remanded to give plaintiff this opportunity. The motion is **GRANTED**.  
9 Plaintiff has thirty days to file an amended complaint. The new complaint will act as a complete  
10 substitute for any previously filed complaint. If the new complaint names a defendant who has not  
11 been served the plaintiff will submit filled out copies of the United States Marshals Service form.  
12 Further, the new complaint must conform to the sanctions orders in place and the Federal Rules of  
13 Civil Procedure. Failure to file an amended complaint on or before **September 15<sup>th</sup>, 2005** will result  
14 in a Report and Recommendation that this action be dismissed.

15 6. Motion for clarification. (Dkt. # 179).

16 The court is not sure what if any action plaintiff is requesting. If the motion is asking for  
17 legal advice as to what the Ninth Circuits remand means the court is not able to give a litigant advice.  
18 The court can state that this action was remanded because plaintiff was not given leave to amend his  
19 complaint prior to the action being dismissed for failure to state a claim. No further court action on  
20 this motion appears appropriate.

21 7. Motion to consolidate. (Dkt. # 180).

22 Plaintiff asks to consolidate this action with 10 other cases that he does not identify. He also  
23 asks that this motion be considered as a request for class certification in the alternative.

24 Consolidation is not appropriate. The residents are in different areas of the facility, Mr. Scott is  
25 currently in isolation. Thus the residents are physically separated for treatment and security reasons.  
26 Consolidation would be impractical and counterproductive to judicial economy. The requirement  
27 that each pleading submitted by the plaintiff's be signed by each plaintiff would make litigation

1 impossible. Waiver of the requirement would mean that one plaintiff was acting as counsel for the  
2 group which is also unacceptable. The pleading submitted by plaintiff does not comply with Fed. R.  
3 Civ. P. 23 or Local Rule 23 and will not be considered as a request for class action. Plaintiff's  
4 motion is **DENIED**.

5 8. Motion to compel responses. (Dkt. # 181).

6 Plaintiff seeks to reinstate all motions that were pending at the time this action was dismissed  
7 and to compel defendants to respond to those motions. The motion is **DENIED**. Plaintiff may re-  
8 file motions he believes appropriate if the motions comply with the sanctions under which he must  
9 now litigate as a result of his past misconduct. Further, to this court's knowledge, there is no  
10 discovery pending in this action. Plaintiff may not conduct discovery without leave of court.

11 The sanctions imposed on plaintiff relieve defendants of their normal obligation to respond  
12 to plaintiff's filings. Defendants will not respond to any further motions without the court directing a  
13 response.

14 9. Motion for copies.

15 Plaintiff complains he has not received a copy of the Ninth Circuit Order in this action and  
16 does not have a copy of the docket sheet. The clerk of court is directed to send Mr. Scott a copy of  
17 the docket sheet in this case. The opinion vacating and remanding this action is found at 127 Fed.  
18 Appx. 323, a courtesy copy of that order will be sent along with this order to plaintiff and defendants  
19 counsel.

20 The Clerk is directed to send copies of this Order to Plaintiff and counsel for defendants, to  
21 note the **September 8<sup>th</sup>, 2005** due date for an amended complaint and to send a courtesy copy of the  
22 Ninth Circuit opinion to plaintiff.

23 DATED this 5<sup>th</sup> day of August, 2005.

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26 Karen L. Strombom  
27 United States Magistrate Judge  
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